

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
HOUSING COMMISSION - ORDINANCE ALLOWING APPOINTMENT OF CITY
COUNCILMEMBERS TO COMMISSION

On September 23, 1986, the City Council considered an ordinance amending the existing Housing Commission ordinance to allow appointment of up to five City Councilmembers to the Commission. Part of the discussion prior to the introduction of the ordinance involved the potential effect of appointing Councilmembers to the Commission on pending housing development action grants (HODAG).

The issue involves the fact that HUD regulations specify that the applicant for such a grant must be a separate and distinct legal entity from the owner of the project proposed to be funded with the grant. Because of the serious time constraints imposed by HUD, the Housing Commission, in order to make the application deadline for proposed HODAG grants, filed applications on behalf of the City of San Diego as applicant indicating that the owner of the projects to be funded would be the San Diego Housing Commission. HUD staff questioned the separate entity status of the Housing Commission from the City Council and this office, as legal counsel to the City Council and the Housing Authority, and Larry Marshall, as general counsel to the Housing Commission, provided HUD staff with legal arguments supporting the City's position that the Housing Commission is a separate and distinct and substantially independent legal entity from the City Council.

The HUD staff eventually accepted our arguments and proceeded to evaluate the City's applications. It is my understanding that the reason HUD requires individual legal status is that, as part of the HODAG process, the applicant is expected to engage in "arms-length" negotiations with the owner of a project to be funded in order to arrive at fair and equitable contractual arrangements.

In the event the City Council proceeds with the adoption of the ordinance allowing up to five Councilmembers to be appointed

to the Commission, and in the event the City Council ultimately exercises such authority and appoints such members, it appears unlikely that this office would be able to convince HUD staff and HUD legal counsel that the Commission would remain sufficiently independent from the City Council to engage in truly arms-length contractual negotiations with one another.

The Executive Director is aware of this fact and has commenced action in order to allow the assignment of any rights under the applications from the Housing Commission to totally independent developers. The Executive Director has informed this office that he feels confident that he will be able to secure good developers for the HODAG projects prior to the effective date of the ordinance, and that if such developers are not secured by that time he will not request funding under the grants until such independent developers are available to proceed with development of the HODAG projects.

At the Council meeting on September 23 brief mention was also made of the potential impact of the ordinance on an existing Housing Commission project in the University Canyon area. Discussions with the Executive Director of the Housing Commission indicate that HUD has already required certain transactions with regard to that project, which transactions are proceeding, and that the ordinance before the Council will not affect that project.

Respectfully submitted,
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City Attorney

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